Access to UNEs

ISSUE III.8 This issue is common to AT&T and WorldCom.

Is Verizon obligated to provide access to UNEs and UNE combinations (such as enhanced extended links and sub-loops) at any technically feasible point on its network, not limited to points at which AT&T collocates on Verizon's premises?

Attorney: IV Mellups
Witness: Mike Pfau

Statement of AT&T Position:

Yes. Verizon should be obligated to provide access to UNEs at any technically feasible point on Verizon's network and such access may not be limited or delayed as a result of Verizon's inability or unwillingness to provide collocation at its premises. Furthermore, in the case of access to subloop elements wholly within the confines of a single property (for example, on-premises wiring), Verizon does not possess property upon which collocation can be provided. Therefore, AT&T's ability to connect to such unbundled network elements must not be limited by any collocation requirement. To permit otherwise would allow Verizon to inflate AT&T's costs of access and delay its ability to compete for customers, particularly in multiple tenant environments ("MTEs").

Proposed Remedy:

Section 11 sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Statement of Verizon Position:

Verizon's position is that collocation is the only technically feasible point for providing access to UNEs at a point on Verizon's network. It argues that all of Verizon's rates for the UNE elements have been priced based on the presumption of collocation, and that rates may differ if access can be accomplished in a different manner. In Verizon's view, if AT&T wants to propose another "technically feasible point" of access, it may request access at that point through the BFR process. In this way, Verizon may evaluate the technical feasibility of AT&T's request, evaluate whether such access is required by law, and if so, develop an appropriate rate.

Statement of Relevant Authority:

In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, (adopted September 15, 1999).

Brief for the Petitioners Federal Communications Commission and the United States, *Verizon Communications* v. *FCC*, Supreme Court Nos. 00-511, 00-555, 00-590 and 00-602 (April 2001).

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Rel. Nov. 5, 1999)* ("UNE Remand Order").

47 C.F.R. §51.319(a)(2)(B).

Explanation of AT&T Position:

Verizon claims that collocation is the only technically feasible point for providing access to UNEs at a point on Verizon's network, or alternatively, that collocation is the only method required by applicable law if a CLEC wishes to access a UNE at Verizon's premises.

These claims are specious. As demonstrated by AT&T in its position on Issue I-1, Verizon does not have the legal right to designate the point on its network where a CLEC may connect to Verizon's network. Rather, CLECs are entitled to determine where they will interconnect with Verizon both for purposes of where they will terminate their originating traffic and where Verizon must deliver its originating traffic to AT&T. There is no provision in the Act that allows Verizon to dictate points of interconnection, or limit them only to collocations.

Verizon's position would effectively preclude the use of enhanced extended links ("EELs"), contrary to the Commission's rulings. An EEL consists of a combination of an unbundled loop, multiplexing/concentrating equipment, and dedicated transport that allows new entrants to serve customers without having to collocate in every central office in the incumbent's territory. As the Commission has noted, collocation is not a prerequisite to access to UNEs.[148] More recently, the Commission stated in its Brief to the Supreme Court that any suggestion that the Commission has endorsed Verizon's position that CLECs must purchase collocation before they may connect to UNEs "mischaracterizes the FCC's ruling."[149] The Commission stated that "[s]uch restrictions not only are anticompetitive, but also defeat the purpose of some network element

---

148 *See In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, (adopted September 15, 1999) (*"UNE Remand Order"*) at ¶482 and n. 973.

149 Brief for the Petitioners Federal Communications Commission and the United States, *Verizon Communications* v. *FCC*, Supreme Court Nos. 00-511, 00-555, 00-590 and 00-602 (April 2001), at 42-43 n. 18.

combinations, which are designed, at least in part, to avoid the need to purchase collocation space," pointing specifically to CLECs' use of EELs.[150]

Similarly, Verizon's unsupported position that collocation is the only technically feasible point for providing access to UNEs at a point on its network, if adopted, would adversely affect the AT&T's right to connect to on-premises sub-loops. First, § 51.321 of the Commission's Rules – the section governing interconnection and access to unbundled network elements – specifies that collocation is *a* technically feasible means, but is not the sole means to access a UNE.

Second, AT&T needs access to all subloop elements of the loop, particularly in connection with the provision of services to multiple dwelling units ("MDUs") and multi-tenant environments ("MTEs") to enable it to compete for end users in those locations. The collocation discussed in § 51.321(b)(1) of the Commission's Rules covers collocation "at the premises of an incumbent LEC." Given that an MTE has no ILEC premises within which collocation can be provided, the language of § 51.319(a)(2)(D) cannot apply to on-premises wiring owned or controlled by the incumbent. Thus, although § 51.319(a)(2)(iv) of the Commission's Rules provides that subloop access is subject to the Commission's collocation rules, that provision is not exclusionary. It cannot be broadly construed to require collocation in all instances. More specifically, it is not relevant to the narrow situation of access to on-premises sub loop elements.

In sum, Verizon's insistence that interconnection can take place only at collocations is simply another variant of its unsupportable position that AT&T may not

---

150 *Id.* and n. 19.

use combinations of UNEs, such as EELs, to replace special access, and its obstructionist pose with respect to interconnection generally.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

ISSUE V.3 This is an issue exclusive to AT&T.

UNE-P Routing and Billing

Should reciprocal compensation provisions apply between AT&T and Verizon for all traffic originating from UNE-P customers of AT&T and terminating to other retail customers in the same LATA, and for all traffic terminating to AT&T UNE-P customers originated by other retail customers in the same LATA?

Witness: Mike Pfau
Attorney: IV Mellups

Statement of AT&T Position:

Yes. Reciprocal compensation provisions should apply between AT&T and Verizon for all traffic originating from UNE-P customers of AT&T and terminating to other retail customers in the same LATA, and for all traffic terminating to AT&T UNE-P customers originated by other retail customers in the same LATA. This means intraLATA and local calls originated by AT&T UNE-P customers that Verizon subsequently terminates on its own network or hands off to another party for termination, should all be covered by reciprocal compensation arrangements between AT&T and Verizon. Likewise, any intraLATA and local calls delivered by Verizon to AT&T UNE-P customers that are originated by Verizon customers or are originated by third parties but delivered by Verizon should also be covered by reciprocal compensation. The compensation due between Verizon and the third party would be governed by a separate agreement. It also means that "bill and keep" compensation applies to such UNE-P based calls.

Proposed Remedy:

Section 5.7 sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Statement of Verizon Position:

No. Reciprocal compensation is intended to compensate a local exchange carrier for the costs incurred in terminating the call of another LEC's end user. AT&T proposes that the Parties utilize "bill and keep" for one type of call: where AT&T provides service to AT&T customers via the UNE-P. By this proposal, AT&T is seeking to avoid paying Verizon reciprocal compensation even though Verizon PA will still incur the switching costs to deliver that call to its end user customers. The fact that AT&T chooses to purchase UNE-P from Verizon to serve its end user customers on its network has no bearing on what Verizon is entitled to charge when those customers call Verizon customers.

Explanation of AT&T's Position, Including Discussion of Relevant Authority:

The different rates or compensation schemes for local and toll traffic, and/or for voice and data traffic, are not supported by differences in underlying costs of providing these services. Accordingly, all calls originating and terminating within a LATA should be subject to the same compensation arrangements without regard to end-user classification or type of traffic. LATA-wide compensation arrangements ensure fair and equitable compensation for all intraLATA calls as well as simplifying the negotiations process.

To simplify "transit traffic" compensation arrangements, UNE-P-based calls to and from third party CLECs should be treated by Verizon as their own traffic for the purpose of setting reciprocal compensation obligations. Under this approach, all intraLATA and local traffic originating from AT&T UNE-P customers and routed to Verizon would be treated in a consistent manner as all intraLATA and local usage delivered from the Verizon network to UNE-P customers. To the extent Verizon terminated such traffic to a third party or received such traffic from a third party the compensation arrangement would be handled via a separate agreement between those parties. This approach would eliminate the need for costly and time-consuming processes to negotiate multiple interconnection agreements among all local service providers in the ILEC's territory. In addition, this approach eliminates the requirement that Verizon act as a clearinghouse for the creation and exchange of message records among the various CLECs operating in its territory.

Bill and keep compensation arrangements should apply for all UNE-P-based intraLATA local and toll calls carried over the Verizon's network. Under bill and keep arrangements, carriers do not attempt to recover the costs of terminating calls originated by customers of other carriers from those carriers, thus, obviating the need for the creation and exchange of terminating exchange message records for the purpose of setting and auditing reciprocal compensation charges. This form of compensation is less costly and more efficient for tracking this traffic.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

ISSUE V.4

Should all calls originating and terminating within a LATA be subject to the same compensation arrangements without regard to end-user classification or type of traffic?

SUB-ISSUE V.4.A

Should reciprocal compensation provisions apply between AT&T and Verizon for all traffic originating from UNE-P customers of AT&T and terminating to other retail customers in the same LATA, and for all traffic terminating to AT&T UNE-P customers originated by other retail customers in the same LATA?

Attorney: IV Mellups
Witness: Robert Kirchberger

Statement of AT&T Position:

Yes. The identity of cost characteristics among the various forms of intraLATA calling should be reflected in a unitary compensation scheme for such traffic.

Proposed Remedy:

Sections 1.68, 5.6.2, 5.6.3 and 5.7 set forth the contract terms and conditions necessary to support AT&T's position on this issue.

Statement of Verizon Position:

No. AT&T seeks to avoid access payments by improperly reclassifying intraLATA toll traffic as local traffic.

Statement of Relevant Authority:

Separate Statement of Chairman Michael K. Powell accompanying FCC News Release in *Re: Notice of Proposed Rulemaking, Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (April 19, 2001).

Explanation of AT&T Position. Including Discussion of Relevant Authority:

The different rates or compensation schemes for local and toll traffic, and/or for voice and data traffic, are not supported by differences in underlying costs of providing these services. The same facilities are used to complete toll calls as are used to complete local calls. Yet, Verizon charges different rates to competing carriers, depending on whether the call is characterized as "local" or "toll." These types of discrepancies lead to economic inefficiencies and adverse effects on competition, as Chairman Powell has recently recognized. In his Separate Statement on the *Unified Intercarrier Compensation Regime* rulemaking, he stated that:

> As all regulators and businesses know, however, the rates for interconnecting with the phone network vary depending on the type of company that is doing the interconnecting. In a competitive environment, this leads to arbitrage and inefficient entry incentives, as companies try to interconnect at the most attractive rates. I support this *Notice* because it seeks comment on how we can make these varied intercarrier compensation regimes more consistent with each other and, thus, with competition.[151]

It is clear that all calls originating and terminating within a LATA should be subject to the same compensation arrangements without regard to end-user classification or type of

---

151 Separate Statement of Chairman Michael K. Powell accompanying FCC News Release in *Re: Notice of Proposed Rulemaking, Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (April 19, 2001).

traffic. LATA-wide compensation arrangements ensure fair and equitable compensation for all intraLATA calls as well as simplifying the negotiations process.

Moreover, the distinction between "local" and "toll" calls is a purely artificial one that is totally within the control of Verizon. Verizon gets to decide what constitutes a "toll" call and a "local" call in its territory, and it can use its unilateral power to advantage itself and at the same time disadvantage its competitors for both local and intraLATA toll services. Verizon's decision therefore has competitive consequences. First, it dictates what a competing carrier must pay for call termination – either excessive access rates or the much lower call termination rates. This, in turn determines whether or not the competing carrier is able to enter the market for local and intraLATA toll services.

By requiring that all calls that originate and terminate within a LATA are subject to call termination charges rather than access charges, the Commission can loosen the grip Verizon has over the market and, at the same time, help ensure that consumers pay just and reasonable rates. This would encourage new service plans as well as new investments by competing carriers in Virginia. If Verizon is required to eliminate access charges on intraLATA calling, and instead directed to impose cost-based call termination rates, then IXCs will be able to offer substantially reduced prices for intraLATA calls. Competition, not Verizon label changes, will set prices.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

SUB-ISSUE V.4.A

Should reciprocal compensation provisions apply between AT&T and Verizon for all traffic originating from UNE-P customers of AT&T and terminating to other retail customers in the same LATA, and for all traffic terminating to AT&T UNE-P customers originated by other retail customers in the same LATA?

Statement of AT&T Position:

Yes. All intraLATA and local calls originated by AT&T UNE-P customers that Verizon subsequently terminates on its own network or hands off to another party for termination should be covered by reciprocal compensation arrangements between AT&T and Verizon. Likewise, any intraLATA and local calls delivered by Verizon to AT&T UNE-P customers that are originated by Verizon customers or are originated by third parties but delivered by Verizon should also be covered by reciprocal compensation. The compensation due between Verizon and the third party would be governed by a separate agreement. "Bill and keep" compensation should be applied to such UNE-P based calls to simplify "transit traffic" compensation arrangements.

Proposed Remedy:

Sections 1.68, 5.62, 5.63 and 5.7 set forth the contract terms and conditions necessary to support AT&T's position on this issue.

Statement of Verizon Position:

No. Reciprocal compensation is intended to compensate a local exchange carrier for the costs incurred in terminating the call of another LEC's end user. AT&T proposes that the Parties utilize "bill and keep" for one type of call: where AT&T provides service

to AT&T customers via the UNE-P. By this proposal, AT&T is seeking to avoid paying Verizon reciprocal compensation even though Verizon will still incur the switching costs to deliver that call to its end user customers. The fact that AT&T chooses to purchase UNE-P from Verizon to serve its end user customers on its network has no bearing on what Verizon is entitled to charge when those customers call Verizon customers.

Statement of Relevant Authority:

Separate Statement of Chairman Michael K. Powell accompanying FCC News Release in *Re: Notice of Proposed Rulemaking, Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (April 19, 2001).

Explanation of AT&T Position. Including Discussion of Relevant Authority:

The different rates or compensation schemes for local and toll traffic, and/or for voice and data traffic, are not supported by differences in underlying costs of providing these services. Accordingly, all calls originating and terminating within a LATA should be subject to the same compensation arrangements without regard to end-user classification or type of traffic. LATA-wide compensation arrangements ensure fair and equitable compensation for all intraLATA calls as well as simplifying the negotiations process.

To simplify "transit traffic" compensation arrangements, UNE-P-based calls to and from third party CLECs should be treated by Verizon as its own traffic for the purpose of setting reciprocal compensation obligations. Under this approach, all intraLATA and local traffic originating from AT&T UNE-P customers and routed to Verizon would be treated in the same as all intraLATA and local usage delivered from the Verizon network to UNE-P customers. To the extent Verizon terminated such traffic

to a third party or received such traffic from a third party the compensation arrangement would be handled via a separate agreement between those parties.

This approach would eliminate the need for costly and time-consuming processes to negotiate multiple interconnection agreements among all local service providers in the ILEC's territory. In addition, this approach eliminates the requirement that Verizon act as a clearinghouse for the creation and exchange of message records among the various CLECs operating in its territory.

Bill and keep compensation arrangements should apply for all UNE-P-based intraLATA local and toll calls carried over the Verizon's network. Under bill and keep arrangements, carriers do not attempt to recover the costs of terminating calls originated by customers of other carriers from those carriers, thus, obviating the need for the creation and exchange of terminating exchange message records for the purpose of setting and auditing reciprocal compensation charges. This form of compensation is less costly and more efficient for tracking this traffic.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

ISSUE V.5 This issue is exclusive to AT&T.

When requested, must Verizon provide customized routing (provided as part of local switching) that directs OS/DA traffic to trunk groups that may commingle traffic from the intrastate and the interstate jurisdictions?

Attorney: IV Mellups
Witness: Mike Pfau

Statement of AT&T Position:

Verizon's obligation to provide AT&T with customized routing is plainly established under the FCC rules, because customized routing is one of the functions and features of the switch that Verizon is required to make available as part of the local switching element. Moreover, Verizon must make customized routing available to permit CLECs to route traffic to the OS/DA platform of their choice if Verizon seeks to be excused from the obligation to make its own OS/DA available as an unbundled network element. It is irrelevant in either case that some of the traffic to be routed is intraLATA toll rather than local.

Proposed Remedy:

Sections 11.4 and 11.6 set forth the contract terms and conditions necessary to support AT&T's position on this issue.

Statement of Verizon Position:

The issue concerning the customized routing of toll traffic is not properly a subject of this arbitration of a local interconnection agreement. Verizon already routes this traffic for AT&T through its switch translation technology. AT&T, however, is

seeking to obtain an interexchange service through a local interconnection agreement. Verizon is under no legal obligation to allow AT&T to utilize customized routing as part of local switching in order to route AT&T's intraLATA toll traffic to AT&T's selected OS/DA platform. Verizon is not required to provide customized routing of AT&T's PIC'ed toll traffic in a 2 PIC environment under this agreement in order to be excused from the requirement of providing OS/DA as a UNE. The FCC's *UNE Remand Order* addressed customized routing of local, not intraLATA, traffic.

Statement of Relevant Authority:

First Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd. 15499 (1996) (Local Competition Order), ¶¶ 410, 412, and 446.

Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Rel. Nov. 5, 1999) (*"UNE Remand Order"),* ¶¶ 244, 244 n.475.

Explanation of AT&T Position, Including Discussion of Relevant Authority:

Under the FCC's *UNE Remand Order*, Verizon is excused from making its own OS/DA facilities available for lease as unbundled network elements if it provides CLECs with customized routing as part of the unbundled local switching element. Accordingly, assuming that Verizon wishes to avoid providing OS/DA as an unbundled network element priced at TELRIC levels, and assuming further that Verizon's customized routing solution provides CLECs with a technically feasible and nondiscriminatory ability to route traffic to the OS/DA platform of their choice, Verizon must make customized routing available to AT&T as part of the unbundled local switching element.

In its 1996 *Local Competition Order*, the FCC established local switching as an unbundled network element. In doing so, the Commission defined local circuit switching as not only including the basic function of connecting lines and trunks, but as also encompassing all of the features, functions and capabilities of the local switch.[152] The Commission confirmed this definition in the *UNE Remand Order*.[153] In that Order, the FCC spelled out what "all" features and functions of the local switch meant:

> The local switching element includes all vertical features that the switch is capable of providing, including customized routing functions, CLASS features, Centrex and any technically feasible customized routing functions.[154]

Under Verizon's proposal, "all" features in the switch would be limited initially to those features that Verizon has elected to make available to its own retail customers. This is plainly contrary to the broad definition prescribed by the FCC. As both the *Local Competition Order* as well as the *UNE Remand Order* make clear, "all" features and functions of the local switch means precisely that –"all" features and functions of the local switch, even those that Verizon may not be using for its own retail services. Indeed, the FCC adopted this broad definition to permit new entrants to compete more effectively by giving them the ability to innovate new packages of services, rather than being restricted to mimicking the incumbent's retail offerings.[155]

---

152 *Local Competition Order*, CC Docket 96-98, Aug. 8, 1996, ¶412.

153 *UNE Remand Order*, ¶244.

154 *Id.*, ¶244 n. 475.

155 *See, Local Competition Order*, ¶410.

Thus, Verizon's obligation to provide AT&T with customized routing is plainly established under the FCC rules. Customized routing already is one of the functions and features of the switch that Verizon is required to make available as part of the local switching element. Moreover, Verizon must make customized routing available to permit CLECs to route traffic to the OS/DA platform of their choice if Verizon seeks to be excused from the obligation to make its own OS/DA available as an unbundled network element.[156] Thus, under both rules – and assuming that Verizon does wish to avoid its obligation of providing OS/DA functionality priced at TELRIC levels by providing CLECs with a customized routing solution that complies with the FCC's requirements – Verizon must make such a solution available for AT&T to route intraLATA traffic to the OS/DA platform of its choice.

This obligation is not excused by Verizon's assertion that AT&T already has a switch translation available to accomplish this routing. The FCC's rules requiring Verizon to provide customized routing to requesting carriers are not conditioned or qualified. Thus, it is irrelevant that some of the traffic to be routed is intraLATA toll rather than local. When a CLEC obtains a unbundled network element – in this case local switching that includes OS/DA custom routing functionality – the CLEC is entitled to employ that unbundled network element to provide any technically feasible service without limitations imposed by the incumbent LEC providing the element. As a result, Verizon's attempt to limit the type of traffic that AT&T may route to its facilities – regardless of the nature of those facilities – has no basis in the Act or Commission Rules.

---

156 *UNE Remand Order*, ¶446.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

Local Switching

ISSUE III.9 This issue is common to AT&T and WorldCom.

In what circumstances can Verizon assert the "end user with four or more lines" exception to deny providing AT&T the local switching unbundled network element?

Witness: Mike Pfau
Attorney: IV Mellups

Statement of AT&T Position:

This matter is still under reconsideration by the FCC. AT&T believes that no restrictions should be permitted on the use of unbundled local switching unless Verizon can demonstrate that eliminating the obligation to provide unbundled local switching at TELIC rates would not impair competition. At the very least, this Commission should modify the current four-line unbundled local switching exception to a DS1 standard, because the current rule does not reflect the economic and operational considerations that new entrants face when they assess the viability of aggregating multiple loops at a customer's location.[157] In any event, to the extent that any line limit threshold is retained, this Commission should clarify that it should be based on the number of lines served by an *individual* CLEC for an *individual* customer at a *specific single* premises.

---

157 Even employing prospective technology, the level at which it is economic to replace 2 wire analog loops with a higher capacity facility does not occur until at least 8 analog loops are employed by a customer at a single location. Because such a threshold is dependent upon technology not in broad use as yet, if a line limit is to be applied that is based upon the number of analog loops at a customer's location, that threshold should not be lower than approximately 19 2-wire loops, particularly given the operational limitations of the ILEC hot cut processes. Should the ILEC demonstrate a sustained ability to support market volumes via its hot cut processes (in a quality manner) then the 2-wire loop limit, should one be applied, could possibly be as low as 12 2-wire analog loops.

Proposed Remedy:

Section 11.4.1 sets forth the contract terms and conditions necessary to support AT&T's position on this issue.

Statement of Verizon Position:

Verizon wants to interpret the four-line exception as broadly as possible. Verizon's tariff defines an "end-user" as a "business entity and all of its branches, locations and subsidiaries, or a group of end-users purchasing shared tenant services as a group or a group of coin/public lines owned by the same business entity." Under Verizon's reading of the exception, a business with multiple single-line locations scattered across the Metropolitan Statistical Area ("MSA") could not be served on a UNE-P basis, because those single-line locations collectively would exceed the four line limit.

Statement of Relevant Authority:

UNE Remand Order, ¶¶ 253, 262-266, 272-275, 278, 290, 293, and 295

CC Docket No. 96-98, Letter from Robert W. Quinn, Jr. to Ms. Dorothy Atwood, Chief, Common carrier Bureau (March 30, 2001).

Third Report and Order, Separate Statement of Commissioner Harold Furchtgott-Roth.

Explanation of AT&T Position, Including Discussion of Relevant Authority:

In its *UNE Remand Order* the FCC reaffirmed that, as a general matter, ILECs must provide local circuit switching as an unbundled network element. Specifically, the FCC found that a lack of access to unbundled local switching "materially raises entry

costs, delays broad-based entry, and limits the scope and quality of the new entrant's service offerings."[158] In particular, the Commission found that efforts by CLECs to deploy their own switching facilities face present substantial barriers to entry, not only in the form of the cost of the switch itself, but also in the costs of collocation and coordinated loop "hot cuts" imposed by the ILECs.[159] Accordingly, the Commission rejected the arguments advanced by the ILECs, including Verizon's predecessor Bell Atlantic, and determined that requiring the ILECs to make local circuit switching available as an unbundled network element not only comported with the terms of the Act, but actively promoted the market-opening goals of that statute.[160]

At the same time that it established this general, nationwide unbundling requirement, the Commission also fashioned a narrow exception to that rule. Specifically, the Commission found that ILECs such as Verizon need not provide local switching for CLEC customers located in Density Zone 1 in the top 50 Metropolitan Statistical Areas who have four or more lines, provided that the ILEC provides nondiscriminatory, cost-based access to the enhanced extended link ("EEL") throughout Density Zone 1.[161]

However, application of a line limit, particularly a four-line voice grade loop limit, will foreclose competition for some residential customers and a substantial

---

158 *UNE Remand Order*, ¶253.

159 *Id.*, ¶¶262-266.

160 *Id.*, ¶¶272-275.

161 *Id.*, ¶ 278. As is evident from the discussion of previous issues that address Verizon's refusal to allow the EEL UNE combination to replace special access, and Verizon's

proportion of small and medium sized business customers. Unless and until Verizon can produce clear evidence that AT&T and other CLECs will not be impaired in their ability to compete in Virginia without access to TELRIC-based pricing of unbundled local switching – evidence that does not exist today – the Commission should not exempt Verizon from its unbundling obligations for local switching, regardless of the number of loops that AT&T – or any other CLEC -- employs for service to a particular customer at a particular premises.

In areas where AT&T does not own and operate its own facilities the availability of the UNE-P entry strategy – of which local switching is an integral part -- remains the only rational strategy for mass-market residential and small business customers, and is a critical intermediary step for facilities-based local entry virtually all business customers. AT&T uses UNE-P as a transitional mechanism for moving business customers to AT&T facilities in order to minimize the service disruptions caused by the execution of the manual "hot cut" process that is incapable of supporting mass-market volumes. Accordingly, AT&T has elected to acquire customers using UNE-P, and subsequently convert larger volumes of such customers in a central office from UNE-P to UNE-loops on a "project" basis, thus avoiding some of the performance problems associated with the "hot cut" process. UNE-P also enables AT&T to aggregate sufficient business customers in a geographic area to justify the installation of new facilities, or the augmentation of existing facilities. For these reasons, AT&T has urged the Commission to continue to make UNE-P available to AT&T – and other CLECs – on an unrestricted basis at

---

insistence that interconnection may occur only at collocations, it is not at all clear that Verizon can satisfy that latter requirement for invoking the exception.

TELRIC rates.

Even if the Commission does not agree to unrestricted availability of unbundled local switching at TELRIC rates, it should modify the current arbitrary four-line unbundled local switching exception to, at minimum, an eight-line standard, or preferably a DS1 standard. The current four-line loop limit has no basis in actual economic and operational considerations that new entrants face when they assess the viability of aggregating multiple loops at a customer's location. Any rule based upon the number of loops a CLEC serves for a customer in a geographic area subject to a switching limitation should reflect the economics associated with serving that location with facilities other than individual voice grade local loops. To the extent that the availability of unbundled local switching is tied to the number of lines used by a customer at a particular location, the threshold should be set at the point at which it becomes feasible for a CLEC to employ multiplexed loop facilities to serve the customer.

The current four-line rule bears no relationship to the actual economic tradeoffs that a new entrant faces in considering whether or not it is economically rational to aggregate voice grade loops onto a higher capacity facility. As shown in the Affidavit accompanying AT&T's *ex parte* filing of March 30, 2001, a customer must, on average, have at least eight lines before it becomes economically feasible -- employing prospective technology -- to bypass the individual loop "hot-cut" provisioning processes that would otherwise be necessary and which has already been shown to be unworkable for addressing mass market customers.[162] As explained more fully in that Affidavit, once a

---

162 CC Docket No. 96-98, Letter from Robert W. Quinn, Jr. to Ms. Dorothy Atwood, Chief, Common carrier Bureau (March 30, 2001).

customer has sixteen or more lines at a location, it is generally practical for the customer or carrier to use a DS1 loop facility, which allows the CLEC to avoid the cumbersome individual loop "hot cut" processes that the Commission has already found impairs the ability of CLECs to compete with the comparatively seamless provisioning processes available to CLECs such as Verizon.

AT&T's March 30th *ex parte* sets out a detailed a process that the Commission should adopt in the event that the Commission nevertheless is intent upon establishing a procedure whereby the ILECs could, based upon a factual record, eliminate local switching as an UNE subject to TELRIC pricing. Whether or not the Commission adopts AT&T's proposal, however, it should also clarify the current unbundled local switching exception in three important respects.

First, it should clarify that, for purposes of determining whether an end-user has the requisite number of voice grade lines, an end-user should be defined in terms of individual customers at individual addresses. Thus, if there are multiple end users at a single physical location, each customer should be treated as a separate "end user" for purposes of the exception.

Second, the Commission should make clear that the converse is also true. If a single business customer has multiple physical locations in an area, each location should be also treated as a separate "end user" for purposes of the rule. The reason for this is simple. In that situation AT&T cannot take advantage of economic or operational efficiencies across those locations, and therefore Verizon should not be permitted to aggregate an end user's lines across multiple locations for purposes of limiting AT&T's access to the unbundled local switching UNE.

Third, the Commission should clarify that Verizon is obligated to provide the unbundled local switching element for AT&T and each separately requesting CLEC for up to the specified number of *voice grade* lines for each customer, even in cases where the exception applies. The distinction with respect to voice grade lines is important because of the growth of high speed Internet access. Clearly, counting lines employing DSL technologies where no direct connection to the circuit switched network is likely (which is true for all DSL technologies except ADSL) would serve no practical purpose.

Moreover, once AT&T has obtained unbundled local switching for a particular customer, Verizon should not be permitted to change that service arrangement without AT&T's consent, regardless of whether the customer adds more lines in the future. The addition of a line at a customer's location that may result in the total lines served by AT&T exceeding the local switching line limit should not cause the pre-existing service arrangements (*i.e.*, those served using unbundled local switching) to be disrupted or increased in price.

The basis for these clarifications is clear in the Commission's previous rulings. While the *UNE Remand Order* is not definitive on what it means to be a "customer with four or more lines," the discussion in that Order makes it clear that the Commission intended that exception to apply narrowly. Indeed, the Commission explicitly noted that its purpose in crafting the exception is to differentiate between larger customers and the "mass market."[163] To that end, the Commission's discussion focused on customer location, describing, for example, that most residential customers should fall outside this

---

163 *UNE Remand Order*, ¶295.

exception because it is unlikely they will have four lines into their homes.[164] The Commission also plainly indicated that the exception is only intended to apply to "discrete" groups of customers, and is not to be applied wholesale to prevent the ability of CLECs to obtain unbundled network switching or combinations of elements that include that UNE.[165]

The "by location" definition is consistent with the Commission's determination that, in general, unbundled local switching is necessary to effectuate the pro-competitive objectives of the Act. Applying the exception as advocated by AT&T will ensure that new entrants have the flexibility deemed essential by the Commission for opening the mass and small business markets to effective local exchange competition. In contrast, an expansive application of the exception as advocated by Verizon will give it yet another tool for frustrating the Commission's market-opening efforts. Accordingly, the Commission should adopt AT&T's proposed resolution of this issue.

As a matter of interconnection agreement language, AT&T merely seeks to supplement an applicable law reference with the language from the FCC Order that was used to develop the rule. Use of this language will serve only to clarify and place in context the rule that Verizon has agreed to cite in the agreement. Verizon's suggestion that the addition of supplemental language would create "ambiguities" is completely unfounded.

The alternative proposed by Verizon would lead to an economic, administrative, and operational nightmare. Under Verizon's proposal, AT&T and other CLECs would

---

164 *Id.*, ¶293.

165 *Id.*, ¶290.

not be able to economically support alternative service arrangements for the reasons described above. Thus, the only purpose of applying the four-line exception as Verizon wishes would be to preserve Verizon's incumbency advantages. Moreover, customers, especially business customers, add and subtract lines frequently. As a result, without the proposed clarifications, AT&T and its customers could suddenly find the cost basis for services varying dramatically as the lines employed at a particular location alternately exceed then fall below the limit, as customer churn affects the installed base.[166] Such a result would wreak havoc on competition. The Commission should not handicap AT&T and other CLECs in their efforts to break into the local exchange market. Therefore, the Commission should eliminate or modify the exception, and in all events adopt the proposed clarifications in this proceeding to the extent that any line limit on the unbundled local switching element is imposed.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.

---

166 *See, e.g., Third Report and Order*, Separate Statement of Commissioner Harold Furchtgott-Roth, at 3. In the alternative, if the unbundled local switching element price were suddenly changed to "market prices," the CLEC could find that the economics of serving the customer are materially changed with little or no advance notice or opportunity to react.

OSS ACCESS

Issue I.11. This issue is common to AT&T, Cox and WorldCom.

May Verizon summarily terminate AT&T's access to OSS for AT&T's alleged failure to cure its breach of obligations concerning access to ISS per Schedule 11.6?

General Principles:

- *Verizon does not have the right to suspend a CLEC's right to use the OSS UNE.*
- *Other remedy provisions of the ICA are adequate to protect Verizon's interests.*

AT&T's Position:

Verizon has available to it numerous remedies to cure an alleged breach by AT&T of access to Verizon's OSS. Verizon's proposal to retain the right summarily to terminate such access is overbroad and overreaching. Moreover, the adverse consequences to AT&T's ability to conduct business that such a draconian remedy would produce far surpasses any conceivable harm that would accrue from any such breach. AT&T has more than sufficient incentive to protect Verizon's OSSs without the threat of being unable to conduct business.

Proposed Remedy:

Verizon's suggested language in section 5.1 of Schedule 11.6 should be rejected.

Verizon's Position:

Verizon should have the right to protect its OSS and should, upon detection of a breach by AT&T and its failure to cure the breach, have the right to prevent it form continuing to commit breaches of its obligations by preventing its access to Verizon's OSS.

Relevant Authorities:

First Report and Order, *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499.

Explanation of AT&T's Position, Including Discussion of Relevant Authority:

Verizon contends that it needs the right to protect access to its OSS, a point AT&T does not dispute. But the agreed language in other sections of the Agreement contain more than adequate remedies for Verizon to do so. Moreover, if Verizon detects interference, impairment or other harms in its OSS, such harms could well impair AT&T's ability to conduct its business; thus AT&T has every incentive to abide by its obligations and to cooperate with Verizon in the detection and prevention of any interference. Verizon's proposed remedy would enable it to discontinue- summarily and unilaterally AT&T's access to Verizon's OSS within ten days of its notification to AT&T alleging that, in Verizon's sole judgment, AT&T has committed a breach of its OSS contractual obligations, without any regard to the alleged severity of the breach or of any impact on Verizon's OSS. Such a remedy is excessively punitive and unwarranted.

Other Proceedings:

AT&T is currently investigating which, if any, state statutes and judicial and regulatory decisions address this issue.